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In The

Supreme Court of the United States

1976-77 Term

No. 76-1126

THOMAS ROWLAND SHERIDAN,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Iowa

BRIEF FOR RESPONDENT IN OPPOSITION

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TABLE OF CONTENTS

	Pages
Opinion Below	1
Jurisdiction	1
Question Presented	2
Constitutional Amendment Involved	2
Statement of the Case	2
Argument	3
Conclusion	6

CITATIONS

Cases:

Aquilar v. Texas, 378 U. S. 108 (1974)	4
United States v. Myers, 270 F. Supp. 734 (E. D. Pa. 1967)	5
United States v. Pike, 523 F. 2d 734 (5th Cir. 1975)	4, 5
United States v. Serao, 367 F. 2d 347 (2nd Cir. 1966)	5
United States v. Ventresca, 380 U. S. 102 (1965)	5

Constitutional Provision:

Fourth Amendment to United States Constitution	2

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OPINION BELOW

The opinion of the Iowa Supreme Court (Appendix A of Petition) is reported at 247 N. W. 2d 232 (Iowa 1976).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Is a search warrant invalid for the hypertechnical reason that it was composed by the applicant-police officer and signed by the magistrate where the magistrate conducted an inquiry into the existence *vel non* of sufficient probable cause to support the search and then affixed his signature to the already composed warrant.

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CONSTITUTIONAL PROVISION INVOLVED

Amendment IV, United States Constitution.

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STATEMENT OF THE CASE

Thomas Rowland Sheridan was convicted in the Iowa District Court, on two counts, for possession of a controlled substance with intent to deliver in violation of Section 204.401 (1), Code 1973. He was also convicted on three other counts for possession of a controlled substance in violation of Section 204.401 (3), Code 1973.

The controlled substances which were the subject of prosecution were seized in a search of Sheridan's home on a warrant issued by Magistrate Ben E. Kubby.

Officer Larry Leitzke of the Des Moines Metropolitan Area Narcotics Squad (M. A. N. S.) had presented Magistrate Kubby with a prepared search warrant and a form from the magistrate's endorsement thereon containing an Abstract of evidence. Magistrate Kubby conducted a probable cause hearing and then affixed his signature to the already composed warrant and endorsement form.

Sheridan filed a pretrial motion to suppress the evidence seized pursuant to the warrant issued by Magistrate Kubby. Sheridan objected that the warrant was not issued by a neutral and detached magistrate and that the magistrate's signature served as a mere rubber stamp of the police officer's determination of probable cause. District Judge Anthony M. Critelli heard and denied Sheridan's motion to suppress. Judge Critelli found in part as follows: "The magistrate's signature at the bottom of the instrument indicates that he approves, accepts, and *adopts* the prepared instrument and it has the same force and effect as if he had personally prepared same." (Emphasis added.) The Iowa Supreme Court sustained Judge Critelli's finding in this regard and affirmed Sheridan's conviction. Sheridan then petitioned this Court for a Writ of Certiorari to the Iowa Supreme Court.

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ARGUMENT

Sheridan advances the contention that a magistrate becomes a "rubber stamp" for the police and loses the ability, to be "neutral and detached" if he affixes his signature to a search warrant form prepared by a police officer rather than preparing it himself. This would of course be true if the magistrate affixed his signature to the form presented to him without holding a probable cause hearing.

But the magistrate in this case did hold a probable cause hearing. He then adopted, approved, and accepted the instrument prepared by the applicant-police officer. This certainly is not to say that the magistrate became a "rubber stamp" for the police.

A probable cause hearing before a neutral and detached magistrate is indeed required before a search warrant may be issued. This operates as a check upon over zealous law enforcement officers whose judgment might become clouded by their desire to apprehend criminals. It is the subjective judgment of police officers that is not supposed to be "rubber stamped." The magistrate must make his own judgment of the facts presented to him by police officers under oath. *Aquilar v. Texas,* 378 U. S. 108 (1964). The magistrate in the instant case did not merely rubber stamp the judgment of police officers. He issued the warrant only after taking sworn testimony from the applicant-police officer. The procedure herein thoroughly complied with the requirements of the Fourth Amendment.

A situation similar to that with which we are faced here was presented in *United States v. Pike,* 523 F. 2d 734 (5th Cir. 1975). In a footnote, the court there noted:

> "Appellant Lee also challenges the local Birmingham procedure whereby a completed search warrant is presented to the magistrate who then places the submitting officers under oath and conducts an inquiry into the existence or nonexistence of sufficient probable cause to support the particular search. The more typical procedure involves the submission of a sworn affidavit. The real difference in a probable cause evaluation made on the basis of factual matters set out in an affidavit or in a completed search warrant is difficult

> to see. *As long as the magistrate does conduct a meaningfully independent inquiry before affixing his signature, the constitutional standards should be regarded as met."* 523 F. 2d 737-738, n. 4. (Emphasis added.)

In response to the statement in *Pike,* Sheridan states that the phrase "completed search warrant" was not defined by the *Pike* court and that it has not been defined by the Iowa Supreme Court. The State submits that a "completed search warrant" refers to exactly what we have here—one which needs only the signature of magistrate for issuance. That is obviously what the *Pike* court was confronted with. That's what we have here. Sheridan's contention should be shortly disposed of.

Sheridan's argument, at best, is a hypertechnical one. Courts should not invalidate search warrants by viewing search warrant procedures in a hypertechnical, rather than a common sense, manner. *United States v. Ventresca,* 380 U. S. 102, 109 (1965); *United States v. Serao,* 367 F. 2d 347 (2nd Cir. 1966). In *United States v. Myers,* 270 F. Supp. 734 (E. D. Pa. 1967), *after* the applicant-police officer had related his probable cause information to the magistrate, the magistrate administered the oath. The court acknowledged such a procedure was irregular but held it did not affect the validity of the warrant. The procedure, in the instant case couldn't even be classified as irregular. Sheridan's contention that the procedure here is constitutionally defective is utterly frivolous. No writ should issue.

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CONCLUSION

In this case a neutral and detached magistrate held a probable cause hearing and objectively reviewed the sworn testimony before him and then issued a search warrant. It is of no consequence that he merely had to affix his signature to the warrant composed for him by the applicant police officer. The requirements of the Fourth Amendment were complied with. No writ should issue.

Respectfully submitted,

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Attorney General of Iowa

RAY SULLINS
Assistant Attorney General

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CERTIFICATE OF SERVICE

I, Ray Sullins, Assistant Attorney General for the State of Iowa, hereby certify that on the 2nd day of May, 1977, I mailed three (3) copies of Brief for Respondent in Opposition, correct 1st class postage pre-paid, to:

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I further certify that all parties required to be served have been served.

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